

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KEITH L. DELLINGER,

Petitioner

v.

//

CIVIL ACTION NO. 1:05CV47
(Judge Keeley)

DOMINIC A. GUTIERREZ,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 16, 2005, pro se petitioner Keith L. Dellinger ("Dellinger") filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On September 27, 2005, Magistrate Judge Kaul issued a Report and Recommendation ("R&R") recommending that Dellinger's case be dismissed with prejudice. The Magistrate Judge determined that the Bureau of Prisons ("BOP") had the discretionary authority to deny Dellinger's eligibility for early release status because he received a gun enhancement at sentencing; that the BOP did not erroneously consider the two point gun enhancement in light of United States v. Booker, _____ U.S. _____, 125 S.Ct. 738 (2005); and that there is no Administrative Procedures Act violation. Accordingly, the Magistrate Judge recommended that the petitioner's § 2241 petition be **DENIED** and **DISMISSED WITH PREJUDICE**.

ORDER ADOPTING REPORT AND RECOMMENDATION


The R&R also specifically warned that failure to object to the Magistrate's recommendations would result in the waiver of any appellate rights on this issue. Nevertheless, Dellinger failed to file any objections.¹

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety and **ORDERS** the case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the pro se petitioner via certified mail, return receipt requested and to transmit copies of this Order to counsel of record.

Dated: December 22, 2005.


IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ Dellinger's failure to object to the Report and Recommendation not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).